

September 17, 2004
Case No.: AUS920010390US1 (9000/41)
Serial No.: 09/881,873
Filed: June 14, 2001
Page 7 of 12

INTRODUCTORY REMARKS

In the Office Action dated July 14, 2004, the Examiner levied the following rejections:

- A) Claims 1-3, 7-9, 12-18, 22-24 and 27-31 were rejected under 35 U.S.C. §103(a) under Lewis in view of Westerlage.
- B) Claims 4 and 19 were rejected under 35 U.S.C. §103(a) under Lewis in view of Westerlage in view of Abe.
- C) Claims 5 and 20 were rejected under 35 U.S.C. §103(a) under Lewis in view of Westerlage in view of Kraushaar.
- D) Claims 6 and 21 were rejected under 35 U.S.C. §103(a) under Lewis in view of Westerlage in view of O'Donovan.
- E) Claims 10, 11, 25 and 26 were rejected under 35 U.S.C. §103(a) under Lewis in view of Westerlage in view of Altschul.
- F) Claim 32 is patentable

September 17, 2004
Case No.: AUS920010390US1 (9000/41)
Serial No.: 09/881,873
Filed: June 14, 2001
Page 8 of 12

— REMARKS —

As an initial matter, Applicants note that the Examiner has mischaracterized the previous filing. Rather than a request for reconsideration of the finality of the rejection, Applicants filed a notice of appeal and an appeal brief.

A) Claims 1-3, 7-9, 12-18, 22-24 and 27-31 were rejected under 35 U.S.C. §103(a) under Lewis.

The rejections to claims 1-3, 7-9, 12-18, 22-24 and 27-31 are traversed. In order for this §103(a) rejection to stand, each and every element of the claims must be disclosed in as great detail by the reference as claimed. Because Lewis in view of Westerlage does not teach or suggest, at a minimum, "modifying the call count based on calling plan parameters," as claimed in claim 1, "computer readable program code for modifying the call count based on calling plan parameters" as claimed in claim 16, and "means for modifying the call count based on calling plan parameters" as claimed in claim 31, this §103(a) rejection must fall.

The Examiner correctly notes that Lewis does not disclose modifying the call count based on calling plan parameters, and relies on Westerlage for such teaching. However, Westerlage only teaches that the billable time recorded for each *segment* may be modified – Westerlage specifically fails to teach the claimed elements. In column 9, lines 14-17, Westerlage defines a "call transaction" as "components of a single call transaction between complex 16 and a user of communication system 10." As specified in column 11, lines 4-18, identified by the Examiner, Westerlage teaches that the billing for each *segment* may be rounded, truncated or otherwise modified. Westerlage does not teach or suggest modifying the call count based on calling plan parameters. Westerlage only teaches modifying the billing applied to a single call. Lewis in view of Westerlage does not teach or suggest "modifying the call count based on calling plan parameters" as claimed in claims 1 and 31.

September 17, 2004
Case No.: AUS92001039QUS1 (9000/41)
Serial No.: 09/881,873
Filed: June 14, 2001
Page 9 of 12

Thus, Westerlage cannot teach the elements of claims 2 or 17 wherein the modified call count is added and an accumulated call count is determined. Contrary to the Examiner's assertion, the reference does not teach that the call time is "modified as desired." The reference merely teaches that the billing for a single call may be modified.

Similarly, Westerlage does not teach subtracting the modified call count from a time ration and determining a remaining call time, as claimed in claim 3 or 18. Furthermore, Lewis does not teach subtracting the modified call count from a time ration, as claimed in claims 3 or 18. At most, Lewis teaches, at column 5, line 60-column 6 line 19, that telephone usage is monitored and generates statistical information. Lewis does not teach a "time ration" and Lewis does not teach subtracting the modified call count from the ration. Likewise, neither Westerlage nor Lewis teach or suggest determining a remaining call time.

Lewis does not disclose a modified call count as claimed in claim 9. Furthermore, neither Lewis nor Westerlage teach or suggest a special usage parameter, and neither reference teaches or suggests a special call count based on the special usage parameter and the modified call count. Further, claim 9 depends from claim 1. Therefore, claim 9 is allowable over Lewis.

Claims 12-15 depend directly from claim 9 and indirectly from claim 1, and are therefore allowable over the prior art for at least the same reasons. Claims 27-30 depend from claim 16 and incorporate limitations similar to claim 12-15 and are therefore allowable over the prior art for at least the same reasons.

The issue is whether Lewis in view of Westerlage would render obvious the claimed invention - under the strictures of §103(a), the references cannot. Withdrawal of the rejections to claims 1-3, 7-9, 12-18, 22-24 and 27-31 is requested.

September 17, 2004
Case No.: AUS920010390US1 (9000/41)
Serial No.: 09/881,873
Filed: June 14, 2001
Page 10 of 12

B) Claims 4 and 19 were rejected under 35 U.S.C. §103(a) under Lewis in view of Westerlage in view of Abe.

The rejection of claims 4 and 19 as unpatentable over Lewis in view of Westerlage in view of Abe is traversed. Claims 4 and 19 are dependent claims, depending from claims 1 and 16, and are therefore patentable over Lewis in view of Westerlage in view of Abe for at least the same reasons as claims 1 and 16 above. Where an independent claim is nonobvious, any claim depending therefrom is also non-obvious. See MPEP 2143.03 (If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5 USPQ 1596 (Fed Cir. 1988)).

Withdrawal of the rejections to claims 4 and 19 is requested.

C) Claims 5 and 20 were rejected under 35 U.S.C. §103(a) under Lewis in view of Westerlage in view of Kraushaar.

The rejection of claims 5 and 20 as unpatentable over Lewis in view of Westerlage in view of Kraushaar is traversed. Claims 5 and 20 are dependent claims, depending from claims 1 and 16, and are therefore patentable over Lewis in view of Westerlage in view of Kraushaar for at least the same reasons as claims 1 and 16 above. Where an independent claim is nonobvious, any claim depending therefrom is also non-obvious. See MPEP 2143.03 (If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5 USPQ 1596 (Fed Cir. 1988)).

Withdrawal of the rejections to claims 5 and 20 is requested.

September 17, 2004
Case No.: AUS920010390US1 (9000/41)
Serial No.: 09/881,873
Filed: June 14, 2001
Page 11 of 12

D) Claims 6 and 21 were rejected under 35 U.S.C. §103(a) under Lewis in view of Westerlage in view of O'Donovan.

The rejection of claims 6 and 21 as unpatentable over Lewis in view of Westerlage in view of O'Donovan is traversed. Claims 6 and 21 are dependent claims, depending from claims 1 and 16, and are therefore patentable over Lewis in view of Westerlage in view of O'Donovan for at least the same reasons as claims 1 and 16 above. Where an independent claim is nonobvious, any claim depending therefrom is also non-obvious. See MPEP 2143.03 (If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious In re Fine, 837 F.2d 1071, 5 USPQ 1596 (Fed Cir. 1988)).

Withdrawal of the rejections to claims 6 and 21 is requested.

E) Claims 10, 11, 25 and 26 were rejected under 35 U.S.C. §103(a) under Lewis in view of Westerlage in view of Altschul.

The rejection of claims 10, 11, 25 and 26 as unpatentable over Lewis in view of Westerlage in view of Altschul is traversed. Claims 10, 11, 25 and 26 are dependent claims, depending from claims 1 and 16, and are therefore patentable over Lewis in view of Westerlage in view of Altschul for at least the same reasons as claims 1 and 16 above. Where an independent claim is nonobvious, any claim depending therefrom is also non-obvious. See MPEP 2143.03 (If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5 USPQ 1596 (Fed Cir. 1988)).

Withdrawal of the rejections to claims 10, 11, 25 and 26 is requested.

F) Claim 32 is patentable

The claim limitations of claim 32 are not disclosed, nor taught or suggested, by the references. As discussed above, the references do not disclose or teach or suggest modifying the call count based on calling plan parameters. Support for claim 32 is on page 8 of the specification.

September 17, 2004
Case No.: AUS920010390US1 (9000/41)
Serial No.: 09/881,873
Filed: June 14, 2001
Page 12 of 12

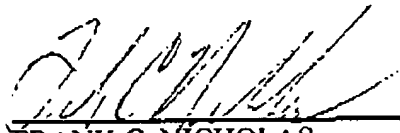
SUMMARY

Applicants believe that claims 1-31 fully comply with the requirements of 35 U.S.C. §§ 101, 102, 103 and 112, and that this case is ready for allowance. Examiner Omary's rejections of claims 1-31 have been obviated by the above remarks. Withdrawal of all rejections is requested, and Applicants ask that this case pass to allowance without delay. If any questions remain that may be resolved in a telephonic interview, Applicants ask the Examiner to contact the undersigned.

Dated: **September 17, 2004**

Respectfully submitted,

CARDINAL LAW GROUP
1603 Orrington Avenue, Suite 2000
Evanston, IL 60201
(847) 905-7111


FRANK C. NICHOLAS,
Registration No. (33,983)
Attorney for Applicants